

FILED
APR 26 1979
IN THE COURT OF APPEALS OF IOWA SUPREME COURT

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ROBERT L. MORSE AND
PHYLLIS P. MORSE,

Appellees,

vs.

SAMUEL J. LONG,

Appellant.

Filed April 26, 1979

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2-62122

Appeal from Polk District Court - Hon. J. P. Denato, Judge.

Defendant appeals from judgment declaring that plaintiffs' exercise of an option for the purchase of real property was valid, asserting that plaintiffs did not comply with a term of the contract when payment was mailed prior to the date it was due but not received until after the due date. AFFIRMED.

Alfred M. Pabst, Esq., of Pabst & Pabst, Albia, Iowa, for appellant.

W. Don Brittin, Jr., Esq., of Nyemaster, Goode, McLaughlin, Emergy & O'Brien, Des Moines, Iowa, for appellees.

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

Defendant appeals from trial court judgment declaring plaintiffs' exercise of an option for the purchase of real property was valid. He contends the contract terminated when plaintiffs' payment, although mailed prior to the date it was due, was not received until after the due date.

Plaintiffs are assignees of the party who originally entered into the contract for the sale of real property with defendant. This dispute springs from part two of the original contract which contains an option whereby six-acre tracts of a larger property could be purchased each year if and when plaintiffs made timely exercise of an option to do so. Although the contract required a written notice by December 1 of intention to exercise the option, the mutually accepted past practice regarded an oral notice as sufficient for a valid exercise. Each year an oral notice was given by plaintiff and was accepted by the defendant. Such a notice was given defendant in the fall of 1976 and defendant does not contend that it was ineffective because not in writing.

For each six-acre tract as to which plaintiffs' option was exercised, the contract called for payment of \$6,000.00 in cash on or before January 1, but provided for extension of the due date until March 1 if necessary. Again the procedure each year was the same, plaintiffs paid the purchase price by check and mailed it to defendant prior to March 1. When plaintiffs exercised their option in the fall of 1976, defendant specified that the check for the purchase price should be sent to his home address in Albia, Iowa, instead of to his bank account as had been the practice during the previous three years. It is undisputed that on February 28, 1977, plaintiffs mailed a check for \$6,000.00 to defendant at his home address. This action arises from the fact the check did not arrive until sometime after March 1, 1977.

The trial court found, and we agree, that the parties had established a course of conduct whereby mailing was an acceptable method by which defendant can be paid. This is not the same as a finding that the March 1 payment deadline has been waived. A finding that mailing is an acceptable method of payment means only that payments mailed but not delivered by the contractually specified time are considered timely made. See Kerin v. Udolf, 165 Conn. 264, 268, 334 A.2d 434, 437 (1973); 70 C.J.S. Payment, section 7 (1951). We therefore hold that plaintiffs' payment was effectively made when deposited in the mail on February 28, 1977. We have considered all issues presented and find no ground for reversal.

AFFIRMED.