FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

ELMER E. PETERS,	)	
Appellee,	)	Filed February 28, 1978
vs.	)	
GEORGE L. KRAMER and GEORGIA A. KRAMER and RICHARD V. HART,	)	367 2-60203
Appellants.	)	

Appeal from Clinton District Court - C. H. Pelton, Judge.

Defendant-sellers appeal trial court ruling the plaintiff-buyer was entitled to rescission of a real estate contract and its award of actual and punitive damages. - Affirmed.

Dudley C. Lowry, Davenport, Attorney for Appellants.

Simon W. Rasche, Jr., Camanche, and M. L. Sutton, Clinton, for Appellee.

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

PER CURIAM

Defendant-sellers George L. and Georgia A. Kramer appeal rescission of a real estate contract and the award of actual and punitive damages to plaintiff-buyer Elmer E. Peters. We affirm.

The Kramers first claim an abuse of discretion in the trial court's admission of photographs taken in 1965 and 1968. In 1970 the Kramers as purchasers of a 33-acre tract entered into an agreement to allow Peters to purchase the plot of land within the acreage which he had occupied as a tenant since 1963. Peters testified the 1965 and 1968 photographs accurately portrayed the condition of the property in 1972 just before the Kramers fenced him out and began running cattle on it. The Kramers did not seriously refute the improvements reflected there. Nor did they claim the denuded ground and damaged cottage reflected in Exhibits 11 and 12 inaccurately portrayed the damage occurring after 1972. The requisite similarity was, therefore, adequately established so that, as stated in Galbraith v. George, 217 N.W.2d 598 (Iowa 1974), no abuse of discretion occurred in the admission of the photographs to show the state of the property before and after the Kramers seized possession.

The Kramers also claim reversal because the trial court failed, in their view, to give any consideration to their evidence. Our review indicates support for the trial court's characterization of the Kramer's evidence as not credible and insufficient to establish their oral lease theory or the $10,000 counter relief sought. The trial court was merely stating its determination of the weight to be accorded the testimony rather than giving it no consideration at all. See Tamm, Inc. v. Pildis, 249 N.W.2d 823 (Iowa 1976).

The Kramers' third claim that it was error to grant punitive damages in this rescission action is without merit. Exemplary damages may be awarded in a contract action where the evidence establishes an independent willful tort. Kuiken v. Garrett, 243 Iowa 785, 51 N.W.2d 149 (1952). Our review convinces us that the trial court rightly found the conduct of the Kramers willfully tortious in that it produced the virtual destruction of Peters' cottage and the surrounding property. We find no reversible error in the award of punitive damages.

The Kramers next seek reversal claiming Peters' recovery should be barred by laches. Davenport Hospital Association v. Hospital Service, 261 Iowa 247, 261-62, 154 N.W.2d 153, 158 (1967), which the Kramers cite as support, clearly states in an action on a contract laches is not a defense unless the delay is of such duration to cover the statutory period of limitation. Further, delay in enforcing a right alone does not constitute laches. The Kramers themselves did not receive possession of the property until October of 1971 nor their own warranty deed from the prior owners until January 1972. Peters filed his action for rescission in July, 1974. Laches has no application to this case.

The failure to specifically rule on the Kramers' counterclaim is the last ground urged for reversal. The counterclaim set out the failure of Peters to pay monthly rent of $100 per month from the first day of May, 1971, until July, 1974, in the sum of $3900 and that Peters had stopped them from building a cattle facility to their damage of $10,000. They prayed for judgment against Peters of $10,000. Our de novo review indicates the Kramers introduced no evidence in support of their claim that Peters had thwarted construction of the facility. Without supporting evidence the counterclaim is deemed abandoned. Stark v. L. Ginsberg & Sons, 236 Iowa 735, 739, 18 N.W.2d 627, 629 (1945); Farnsworth v. Crabb, 178 Iowa 565, 567-68, 159 N.W. 1042 (1916) and Kurtz & Bettinger v. Hoffman, 65 Iowa 260, 262, 21 N.W. 597, 598 (1884). The trial court ruled Peters was the injured party entitled to rescission and actual and punitive damages. We find no reversible error in its failure to specifically deny the counterclaim necessarily rejected by the force of its ruling and for which no evidence was introduced to allow a favorable ruling by the court.

AFFIRMED.