

IN THE COURT OF APPEALS OF IOWA

No. 6-660 / 96-0302

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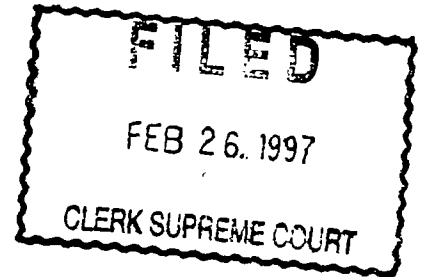
JIM FELLER d/b/a FELLER REALTY,

Plaintiff-Appellant,

vs.

**RODNEY J. LAUGHLIN and LINDA S.
LAUGHLIN, Husband and Wife,**

Defendants-Appellees.



Appeal from the Iowa District Court for Jackson County, Charles H. Pelton,
Judge.

Plaintiff, a realtor, appeals from a district court order granting summary judgment in favor of defendants, sellers, in plaintiff's action for a commission allegedly due from the sale of defendants' property. **AFFIRMED.**

Glenn Bartelt of Schoenthaler, Roberg, Bartelt & Kahler, Maquoketa, for
appellant.

Steven E. Mayer of Mayer, Mayer, Lonergan & Rolfes, Clinton, for appellees.

Considered by Habhab, C.J., Huitink and Vogel, JJ.

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PER CURIAM

This appeal involves a dispute over a commission arising out of a sale of real property. The district court granted summary judgment in favor of the sellers. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Rodney and Linda Laughlin owned a property called the "Home Port" fronting the Mississippi River in Sabula, Iowa. The Laughlins decided to sell the property in April 1995 without using a realtor. They put up "for sale" signs and spread the word that the property was for sale. They showed the property to several couples in May 1995, including Stan and Marcia Holmbo.

When no offers to buy were tendered, the Laughlins decided to list the Home Port with Jim Feller, a realtor in Preston, Iowa. On Wednesday, May 31, 1995, the Laughlins signed a preprinted listing agreement provided by Feller, which stated, in pertinent part:

The owners grant to Feller Realty, Realtor, the exclusive right to sell the following described property

Owner understands and agrees that the commission shall be payable to the Listing Realtor, whether sold by the real estate broker or salesman, by the Owner, or by any other person during the period of this listing, or any extension thereof, or within ninety (90) days after the expiration of this listing, or any extension thereof, *to any persons, firm, or corporation contacted or caused to be interested in property during the term of this agreement*, or any extension thereof, by said Realtor, the Owner, or any real estate broker or salesman.

(Emphasis added.)

On June 3, 1995, the Holmbos returned to the Home Port and made an offer to buy the property. On June 6, 1995, the Laughlins called Feller and told him they felt they had the property sold. Feller returned the key but told the Laughlins he expected the listing agreement to be honored. The Laughlins thereafter accepted the Holmbos' offer.

Feller filed a petition at law seeking to recover the commission of \$8700 allegedly due him under the listing agreement. Both sides filed motions for summary judgment, agreeing there were no material facts in dispute and that the case turned on the interpretation of the listing agreement.

The district court entered summary judgment in favor of the Laughlins. The court concluded the parties had a valid listing agreement between them. The court further determined the listing agreement failed to negate, by clear and unequivocal language, the Laughlins' right to sell their property themselves without paying a commission. The court found the listing agreement contained language (shown in italics above) requiring the broker to be the procuring cause of the sale: since Feller admittedly had performed no services in procuring the buyer, the law would not protect his claim to a windfall commission. Feller appeals.

We review for errors of law. Iowa R. App. P. 4. The parties agree that this action can be properly resolved by summary judgment and that it requires only a determination of the legal consequences flowing from undisputed facts.

The parties agree that the Holmbos were interested in the property before the term of the listing agreement. The parties also agree that the Holmbos appeared, unsolicited, at the Laughlins' property to make an offer during the term of the agreement. Under these facts, no commission becomes payable because the sale was not to "any person . . . contacted or caused to be interested in the property during the term of the agreement." We reject Feller's argument that the Laughlins "contacted" the Holmbos for purposes of the listing agreement when they accepted the Holmbos' offer.

For the reason stated, we affirm the district court's ruling.

AFFIRMED.