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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES SCHAAP and LINDA SCHAAP,)
Plaintiffs-Appellees,)
vs.)
MERLE P. LOCKWOOD,)
Defendant-Appellant.)

Filed September 6, 1984 127

4-299
83-1548

Appeal from the Iowa District Court for Floyd County - Ralph F. McCartney, Judge.

Defendant appeals from the trial court's construction of a contract for the sale of stock. AFFIRMED.

James F. Smith of Noah & Smith, Charles City, Iowa, for defendant-appellant.

E. W. Henke of Henke, Eggert, Ott & Lindaman, Charles City, Iowa, for plaintiffs-appellees.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

Defendant appeals from the trial court's construction of a contract for the sale of stock. We affirm.

On November 20, 1980, plaintiffs, James and Linda Schaap, along with Jan and Donna Masmar, entered into an agreement to purchase stock from defendant, Merle Lockwood, sole owner of Skyline Harvestore Systems, Inc. Under the agreement the Schaaps and Masmars would each purchase thirty-five shares of stock, one-quarter of the one hundred and forty outstanding shares of Skyline. The total purchase price was $1,000,000. Each of the two groups of buyers paid $100,000 as a down payment on January 1, 1981. The remaining $400,000 owed by each group was to be paid in yearly installments beginning July 1, 1982. On January 2, 1981, the parties entered into a "Cross-Purchase Agreement" which obligates a shareholder wishing to sell his stock to offer the stock first to Skyline or the other shareholders. The present suit arose when plaintiffs defaulted on the first installment of $69,350.88, which consisted of a portion of the principal plus interest on the unpaid balance at the rate of eleven and one-half percent.

Plaintiffs claim that under the terms of the contract the $100,000 paid by them on January 1, 1981 purchased seven shares of stock. They claim that since they paid one-fifth of the total consideration they are entitled to one-fifth of the thirty-five shares which were to be purchased. Defendant asserts, however, that the plaintiffs' failure to make the July 1, 1982, payment resulted in a cancellation of the contract and a forfeiture of the $100,000 down payment paid by plaintiffs. In addition, defendant also maintains that plaintiffs owe interest of $46,000 which accrued on the unpaid balance prior to the default and cancellation of the contract. Plaintiffs deny that they owe any interest.

Our review of this action in equity is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

I. Ownership of the Stock. When interpreting a contract, this court attempts to ascertain the intention of the parties as expressed in the language used. Allen v. Highway Equipment Co., 239 N.W.2d 135, 138 (Iowa 1976). The contract should be read in its entirety and all parts of it given effect, if possible, in accordance with the commonly accepted and ordinary meaning of the language employed. Id. at 139.

Plaintiffs point to the language of article IIII(c) of the contract and argue that it expresses the intention of the parties in the case of a default. Article III(c) of the contract provides as follows:

> In the event the Buyers, or either of them, should default in the payment required to be made under the terms of this contract, then with respect to that particular Buyer, or both of them, . . . this contract shall be terminated and all rights and obligations existing by and between the Seller and the Buyers arising from this written agreement shall be terminated and of no further legal effect. To the extent the Buyers, or each of them, shall be considered the owners of the number of shares of stock to which their payments have entitled them and the transfer of these shares of stock, in the event of this said default, shall be governed by a cross purchase agreement entered into simultaneously between the Seller and the said Buyers.

Plaintiffs contend that the second sentence quoted above shows an intent that in the event of default they should own some of the shares based upon payment of some of the total consideration. Plaintiff James Schaap testified that article III(c) was included in the contract at the buyers' request to protect them from forfeiture of amounts paid.

Defendant argues that plaintiffs are not entitled to any shares. He claims that under the terms of the contract plaintiffs were required to pay seventy-five percent of the consideration before they received any stock. He bases his argument on article II(b) which provides:

> The stock will be transferred and endorsed over by the Seller to the Buyers on January 1, 1981, at the time the down payment of $100,000.00 each is paid to the Seller by the Buyers, but the said stock shall remain in the possession of the Seller and shall be pledged to him as collateral

> security for the unpaid balances due under this purchase agreement until the said Buyers have acquired a seventy-five percent equity respectively, in their total purchase price of the stock. The Buyers shall be entitled to vote the stock and to receive dividends on the same, but the stock shall not be delivered to the Buyers until the unpaid balance is paid in full to the Seller. Dividends may be applied by the Seller against any arrearages in payments by the Buyers.

It should be noted that the provisions of this article are inconsistent inasmuch as it appears at one place that defendant could retain possession of the shares until seventy-five percent of the consideration was paid and at another place that he could retain the shares until all of the consideration was paid.

We are persuaded that plaintiffs' interpretation of the contract is the correct one. It is difficult to consider the second sentence of article III(c) as providing for anything other than the ownership by plaintiffs of shares proportionate to the total amount of consideration paid by them prior to default. Allowing defendant to retain all of the shares upon default would render this language of the contract meaningless. Although article II(b) does allow defendant to retain possession of the shares as long as the contract is in effect until a certain percentage of the consideration is paid, it appears that on default the provisions of article III(c) specifically provide for termination of duties and obligations between the parties and for stock ownership by the buyers proportionate to the consideration already paid. In addition to fitting more squarely with the language of the entire contract, plaintiffs' interpretation also avoids forfeiture which is disfavored in both law and equity. See Chicago, Rock Island and Pacific Railroad Company v. City of Iowa City, 288 N.W.2d 536, 541 (Iowa 1980).

Therefore, we hold that the trial court did not err in interpreting the contract so as to make plaintiffs the owners of seven shares of stock in Skyline.

II. Accrued Interest. Article III(c) provides for termination of rights and obligations of the parties at the time of default. Even though interest might have

accrued, it surely represents an obligation that would be terminated and "of no further legal effect."

Defendant argues that the trial court's decision is unfair in that it allows plaintiffs to receive the seven shares without paying their obligation. However, the interest which accrued but which is of no further legal effect as a debt is interest on the purchase price of the remaining twenty-eight shares. Plaintiffs paid $100,000 for the seven shares and no interest accrued on that amount. The accrued interest would be for the remaining shares which plaintiffs do not own. Therefore, plaintiffs are not receiving a windfall under the trial court's interpretation.

Since after our de novo review we find no errors in the trial court's decision, that decision is affirmed.

AFFIRMED.