IN THE COURT OF APPEALS OF IOWA

No. 6-139 / 95-246

ROBERT E. HATCHER and RUTH ANN HATCHER,
Plaintiffs-Appellants,

vs.

ALLISON FINANCIAL CORPORATION; REGAN L SCOW; McCLURE LAND UNLIMITED, INC.; DALE McCLURE; and RONALD MOYER,
Defendants-Appellees.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge.

The plaintiffs appeal the district court judgment dismissing their lis pendens action seeking a permanent injunction against the defendants to prevent them from taking possession of certain real estate. **AFFIRMED.**

Deborah L. Petersen of Reilly, Petersen & Hannan, P.L.C., Council Bluffs, and Bill Bracker, Council Bluffs, for appellants.

John F. Thomas and Lee H. Hamann of McGrath, North, Mullin & Kratz, P.C., Omaha, Nebraska, for appellees McClure Land Unlimited and Dale McClure.

Maurice R. Johnson of Peebles & Evans, P.C., Omaha, Nebraska, and Jack E. Ruesch of Telpner, Smith & Ruesch, Council Bluffs, for appellees Allison Financial Corp. Scow, and Moyer.

Heard by Habhab, P.J., and Cady and Huitink, JJ.

CADY, J.

This appeal follows a bench trial of a lawsuit for reformation of a contract, breach of fiduciary duty, and fraudulent misrepresentation arising out of a real estate transaction. The district court entered an order dismissing the claims. We affirm the decision of the district court on appeal.

Robert and Ruth Ann Hatcher owned farmland in Pottawattamie County. A portion of land was encumbered by a mortgage, which was the subject of a foreclosure proceeding. The Hatchers hoped to resolve the foreclosure action through refinancing.

In the fall of 1993, the Hatchers contacted Regan Scow, a loan broker, for assistance, after having previously been turned down by several financial institutions. They needed approximately $60,000 to pay off the delinquent note and mortgage.

Scow met with the Hatchers. Their discussion included the possibility of selling the farmland. Scow suggested the Hatchers contact Ronald Moyer, a real estate salesperson employed by McClure Land Unlimited, Inc., if they chose to sell the land. The Hatchers later returned a loan application to Scow, but failed to include all the necessary documents to process the application. Scow eventually informed the Hatchers he could not obtain a loan for them.

The Hatchers met with Moyer and entered into several listing agreements to sell the farm. The farm was divided into several parcels for sale purposes, with a total listing price of $316,000. The listing price contemplated a change in the zoning.

On January 3, 1994, Allison Financial Services (Allison) offered to purchase the entire farm for $69,300. This offer included a buy-back option, and was considerably less than the listing price. The lower price was due to a variety of factors, including the need to remove an old ethanol plant tower, potential environmental concerns, zoning changes, and the buy-back provision.

The Hatchers accepted the offer from Allison on January 6, 1994. They gave Allison a warranty deed and Allison agreed to allow the Hatchers to find a buyer for some of the parcels of the land in order for them to obtain the necessary funds to exercise their option or buy-back provision.

To facilitate the repurchase option, Allison entered into listing agreements with Moyer to sell the land. After the option period expired without a buyer, Allison informed the Hatchers they intended to take control of the property. They then filed suit against Allison. The Hatchers testified they considered the transaction to be a loan.

The district court found the Hatchers failed to show Moyer or McClure Land Unlimited, Inc. breached their fiduciary duty or made any fraudulent misrepresentations. The district court also determined the Hatchers failed to show a fiduciary relationship with Allison. The court did find a fiduciary relationship between the Hatchers and Scow, but concluded no breach of that relationship occurred. It also found Scow did not make any fraudulent misrepresentations. The court felt the Hatchers were motivated to enter into the transaction by an "unrealistic dream that someone with unlimited finances would pay an exorbitant price for [the] farm."

The Hatchers appeal. They claim the evidence supports a finding of breach of fiduciary duty and fraudulent misrepresentation. They also claim the documents should be reformed to reflect a secured transaction.

I. Scope of Review

This case was tried in equity and our scope of review is de novo. Iowa R. App. Proc. 4. We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. Proc. 14 (f)(7).

II. Fiduciary Duty

A fiduciary relation is founded on trust or confidence reposed by one person in the integrity and fidelity of another. *Kurth v. Van Horn,* 380 N.W.2d 693, 695 (Iowa 1986). Some relationships necessarily give rise to a fiduciary relationship, while others must be evaluated on the particular facts and circumstances of the case. *Id.* at 696. For example, real estate brokers generally assume a fiduciary relationship. *Garren v. First Realty, Ltd.,* 481 N.W.2d 335, 337 (Iowa 1992). Lenders or bankers often do not. *See Kurth,* 380 N.W.2d at 696-98.

Scow and Moyer acknowledge a fiduciary relation with Hatcher. Such a relationship gives rise to a duty of fidelity and good faith. *Garren,* 481 N.W.2d at 337. This includes a duty of undivided loyalty and disclosure. *Miller v. Berkoski,* 297 N.W.2d 334, 338 (Iowa 1980).

We agree with the trial court the Hatchers failed to establish a breach of any duty. We can find no substantial evidence to support a finding that Scow or Moyer failed to disclose material information and acted outside the interests of the Hatchers. To the contrary, the agents actions were compatible with their duties. Moreover, the Hatchers' claim they did not understand the consequences of the transaction was not supported by the record. Robert Hatcher was experienced and knowledgeable in real estate matters. We also give weight to the finding of the trial court that Hatcher's expectations were not based on actions or representations of others, but his own false hope.

III. Fraudulent Misrepresentation

The tort of fraudulent misrepresentation is based on a false representation. *Beeck v. Kapolis*, 302 N.W.2d 90, 94 (Iowa 1981). A representation includes both words or conduct asserting the existence of a fact. *Lockard v. Carson,* 287 N.W.2d 871, 875 (Iowa 1980); Restatement (Second) of Torts § 525 cmt. b and d (1965).

We have carefully reviewed the record and agree with the trial court Allison, Moyer, McClure, and Scow made no false representations to the Hatchers which would support the claim for fraudulent misrepresentation. In particular, no evidence indicated any of the defendants expressed or implied the real estate transaction was a loan. The relevant documents clearly indicate the parties entered into a sales agreement and any contrary understanding by the Hatchers was not due to any false representations made by Allison, Moyer, McClure, or Scow. In fact, the Hatchers had attempted to sell their farm to another person prior to the Allison sale, with terms nearly identical to the Allison transaction. Their claim they didn't understand the transaction was a sale was not reasonable under the circumstances.

IV. Reformation

Courts may reform an instrument to reflect the real agreement of the parties. *Kufer v. Carson,* 230 N.W.2d 500, 503 (Iowa 1975). Reformation lies within the sound discretion of the court, and depends on whether it is essential to the ends of justice. *Wellman Sav. Bank v. Adams,* 454 N.W.2d 852, 855 (Iowa 1990). Grounds for reformation may be based on fraud, mistake, or many other reasons. *Miller v. Martin,* 246 Iowa 910, 915, 70 N.W.2d 141, 144 (Iowa 1955). The conveyance of real estate may, by proper evidence, be reformed to reflect the agreement was actually a mortgage or security device. *See Koch v. Wasson,* 161 N.W.2d 173 (Iowa 1968).

In determining whether a conveyance of real estate was actually a mortgage, the instruments must be read in light of all the surrounding circumstances. *Koch,* 161 N.W.2d at 177. Important factors include whether a creditor-debtor, mortgagor-mortgage relationship was present at the inception of the transaction, the adequacy of consideration, and retention of possession by the grantor. *Id.* at 177-78. However, each case must be evaluated on its own particular facts. *Id.*

We agree the evidence is insufficient to support reformation. Our goal is to ascertain the intent of the parties. The evidence clearly shows the parties intended the transaction to be a sales agreement.

We observe the Hatchers first contacted Scow for a loan, and were referred to Moyer if they wanted to sell their property. The Hatchers contacted Moyer, and were later informed by Scow a loan could not be made. Thus, from the inception the Hatchers knew a sales transaction was contemplated. The Hatchers and Allison never maintained a debtor-creditor, mortgagor-mortgagee relationship. In fact, it was necessary for Allison to obtain a loan to purchase the farmland from the Hatchers.

Furthermore, the purchase price was adequate considering all the circumstances and risks, associated with the farmland, as well as the buy-back provision. The Hatchers did retain possession of the farm after the agreement was executed, but only during the option period. We also observe the language of the agreement leaves little doubt the transaction was a conditional sale.

V. Conclusion

We have carefully considered all the claims raised by the Hatchers. We find insufficient evidence to support their claims and affirm the decision of the trial court.

AFFIRMED.