IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 2-350 / 91-1665

DAVID J. McANDREWS, MARY M. McANDREWS, and McANDREWS LIVESTOCK, INC.,

Counterclaim Plaintiffs-Appellants,

vs.

WILLIAM C. BERGFELD and MARGARET BERGFELD,

Counterclaim Defendants-Appellees.

Appeal from the Iowa District Court for Dubuque County, James C. Bauch, Judge.

The McAndrews appeal the district court's finding that the Bergfelds did not interfere in bad faith with a real estate contract between the McAndrews and a third party. **AFFIRMED.**

Michael A. Stapleton, East Dubuque, Illinois, for appellant.

Mark J. Seidl of Tom Riley Law Firm, P.C., Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

The McAndrews appeal the district court's finding that the Bergfelds did not interfere in bad faith with a real estate contract between the McAndrews and a third party. The interference allegedly occurred as a result of a suit filed by the Bergfelds claiming a property right in farmland the McAndrews acquired through a right of first refusal and later sold to a third party. See Bergfeld v. Farm Credit Bank, 439 N.W.2d 217 (Iowa App. 1989). The McAndrews claim the Bergfelds did not have a legally protected interest upon which to base their lawsuit.

Prior to September 26, 1986, the McAndrews owned 160 acres of farmland. On that date, however, they transferred their real estate to the Farm Credit System Capital Corporation (Capital Corporation) as part of a loan settlement agreement. The agreement provided that if Capital Corporation obtained an offer for the farm the McAndrews had the right of first refusal for the same purchase price provided they gave notice within ten days, made a down payment of twenty-five percent of the purchase price, and consummated the purchase within thirty days after the ten-day notification period (or forty days in total).

The Bergfelds subsequently made an offer to Capital Corporation for the farm. They were later informed the McAndrews had a right of first refusal. The McAndrews gave proper notice of their intent to exercise their right of

first refusal and paid the twenty-five percent down payment. However, they were unable to close with the entire purchase price within the forty-day period. This was due to an abstracting problem under the control of Capital Corporation. The McAndrews reacquired the farm and, thereafter, entered into a contract for its sale to the New Melleray Abbey.

The Bergfelds subsequently filed suit for specific performance on their alleged contract with Capital Corporation claiming the McAndrews failed to properly exercise their right of first refusal. These claims were rejected by the district court, and summary judgment was entered in favor of the McAndrews. The court of appeals affirmed. Id. at 218.

The McAndrews then brought suit against the Bergfelds for improper interference with the McAndrews' contract with the New Melleray Abbey. The closing was allegedly delayed two years as a result of the interference. After trial, the district court held the Bergfelds were acting in good faith when they pursued their lawsuit, and the court entered judgment in favor of the Bergfelds. The McAndrews appeal, claiming the Bergfelds improperly filed suit because they lacked a legally protected interest. Our scope of review is for the correction of errors at law. Iowa R. App. P. 4.

In their cross claim, the McAndrews contend the Bergfelds intentionally interfered with the contractual

relationship which existed between the McAndrews and the New Melleray Abbey regarding the sale of the real estate. As a result, the McAndrews contend they are entitled to damages resulting from the alleged two-year delay in the closing of this deal.

In order to succeed on this claim, the McAndrews must prove the following elements by a preponderance of the evidence: "(1) an existing valid contractual relationship, (2) knowledge of this by the interferer, (3) intentional interference inducing or causing a breach or termination of the relationship, and (4) resulting damage." Conaway v. Webster City Products Co., 431 N.W.2d 795, 799 (Iowa 1988) (citing Westway Trading Corp. v. River Terminal Corp., 314 N.W.2d 398, 402-03 (Iowa 1982)). A party may also recover under this theory if the interferer causes the performance of the contract to be more expensive or burdensome. See Wolfe v. Graether, 389 N.W.2d 643, 661 (Iowa 1986); Iowa Civil Jury Instruction 1200.1 (1991).

However, even if the McAndrews successfully prove the above propositions, they are not entitled to recover if Bergfeld (the alleged interferer) "acted on the advice of counsel and asserted, in good faith, a legally protected interest. A party acting in that manner has not tortiously interfered with a contractual relationship." Iowa Supply Co. v. Grooms & Co. Constr., 428 N.W.2d 662, 666 (Iowa 1988) (citing C.F. Sales, Inc. v. Amfert, 344 N.W.2d 543, 555 (Iowa 1983)). We conclude Bergfeld made a good faith

effort to advance a legally protected interest of his own when he filed the lawsuit to enforce his contract for the purchase of property.

The record reveals Bergfeld had been interested in the property for some period of time in order to expand his farming operation. A real estate agent sought out Bergfeld, and Bergfeld made an offer on the property without knowledge of the McAndrews' right of first refusal. When Bergfeld became aware of the right of first refusal, he wanted to withdraw his offer. However, at the urging of Capital Corporation and the real estate agent, Bergfeld submitted a second offer which he was advised was acceptable. Bergfeld was assured the McAndrews were unable to meet the requirements of the right of first refusal.

Capital Corporation's conduct toward Bergfeld and his real estate agent eventually caused Bergfeld to seek counsel from an attorney. Bergfeld's attorney advised Bergfeld to be patient and to wait; Bergfeld followed the advice. He never made contact with the McAndrews or attempted to prevent the McAndrews from obtaining the necessary financing. In fact, Bergfeld knew nothing about the McAndrews' finances or business interests other than in the broadest sense.

Even before the New Melleray Abbey became involved in the purchase of the land, Bergfeld's attorney had been attempting to resolve the matter by writing to the parties. Once the New Melleray Abbey became involved in

purchasing the property, Bergfeld and his attorney discussed the situation extensively. Bergfeld's attorney believed the McAndrews had failed to meet the specific restrictions defining the right of first refusal, and he advised Bergfeld he had a legitimate interest in enforcing his contract for the purchase of the real estate.

Specifically, Bergfeld and his attorney believed the McAndrews had failed to properly exercise their right of first refusal by failing to abide by the following condition contained in the settlement agreement entered into by Capital Corporation and the McAndrews:

> In the event that Borrowers [the McAndrews] shall fail to produce the remaining seventy-five percent (75%) of the cash to purchase the real estate within the thirty (30) days of written notice, then the right of first refusal described herein shall terminate and FCSCC or its successor shall be able to sell such real estate without restriction created by the above described right of first refusal.

The parties do not dispute the fact the McAndrews were unable to pay the balance of the purchase price within the time period designated by the right of first refusal.

With this in mind, the following questions remained unanswered in determining whether Bergfeld's offer was enforceable: (1) whether the Bergfeld-Capital Corporation offer and acceptance intended to incorporate the terms and conditions of the McAndrews' right of first refusal contained in the McAndrews-Capital Corporation loan settlement agreement; and (2) whether the McAndrews' failure to tender the remaining seventy-five percent of the

purchase price within the prescribed option period was excused, and therefore unenforceable, as a result of Capital Corporation's delay in furnishing the abstract. The legally protected interest which Bergfeld was asserting was his right to submit this question to a court through the proper legal process in order to determine whether Bergfeld's offer to purchase the property was enforceable.

Bergfeld's intention was to enforce his contract for the purchase of land. Bergfeld never expressed any ill will nor issued any threats toward the McAndrews or the New Melleray Abbey regarding the issues surrounding the purchase of the property. Bergfeld sought and followed the advice of his attorney and pursued in good faith his claim which he had been advised was a legitimate legal interest. Accordingly, we affirm the district court's ruling denying the McAndrews' claim.

AFFIRMED.