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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-451 / 88-1751

HERMAN ANDERSON and **MARJORIE ANDERSON**,

Plaintiffs-Appellants,

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vs

ALICE FAY,

Defendant-Appellee.

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

Plaintiffs were granted discretionary review from a district court order affirming the magistrate's findings in small claims court. They challenge the trial court's affirmance of the magistrate's order. **AFFIRMED.**

Lawrence S. Jones of Cambridge, Feilmeyer, Landsness, Chase & Jones, Atlantic, for appellants.

Richard G. Howard of Howard, Rutherford & Mailander, Atlantic, for appellee.

Considered en banc.

SACKETT, J.

The major issue in this case is whether a vendor who has forfeited a real estate contract has a cause of action against a vendee for alleged damage done to the premises during the contract term. We determine they do not, and affirm the lower court's denial of relief. This case, which came to us after the supreme court granted discretionary review, was filed as a small claims action.

Plaintiffs-appellants Herman Anderson and Marjorie Anderson had sold real estate on an installment sale contract to defendant-appellee Alice Fay. Defendant was delinquent on the contract payments and on March 22, 1988, plaintiffs served her with a notice of forfeiture of real estate contract. The notice advised defendant of the delinquency and directed her unless the contract was made current in thirty days it would stand forfeited. On May 5, 1988, an affidavit of forfeiture was filed with the county recorder. The affidavit recited, among other things, the contract default had not been removed. On May 22, 1988, defendant vacated the premises.

In July 1988 plaintiffs filed this small claims action against defendant. Plaintiffs claimed damages because the real estate was not returned in good repair. Plaintiffs also claimed defendant should pay two years' of delinquent real estate taxes accrued against the premises. Defendant counterclaimed, alleging by reason of plaintiffs' prosecution of the action she suffered injury to her credit

and her reputation. She further alleged because of plaintiffs' action she suffered mental anguish and will incur expenses, including attorney fees. After defendant's counterclaim, plaintiffs amended their petition to contend defendant held over when her right to possession of the real estate expired and during that time the building was uncared for and left unclean.

The magistrate, after hearing, denied plaintiffs' claims and awarded defendant $300 on her counterclaim. The matter was appealed to district court. The district court affirmed the magistrate's decision.

I.

Plaintiffs' first contention is defendant should not have been awarded $300. This case was filed as a small claims action as provided for under Iowa Code chapter 631 In our review we must remember the purpose behind chapter 631 is to provide a simple, informal, and inexpensive procedure for the trial of a small claim, conducted by the court without regard to technicalities of procedure. Lau v City of Oelwein, 336 N.W.2d 202, 203 (Iowa 1983); Barnes Beauty College v. McCoy, 279 N.W.2d 258, 259-60 (Iowa 1979). It is anticipated a small claims trial will be simple and informal without the necessity of a court reporter, but with detailed minutes of testimony to be made by the court hearing the matter. Barnes, 279 N.W.2d at 259-60. We have particular difficulty here because there

are gaps in the transcript of the recording made at trial Additionally, the magistrate's judgment provides no reasons for the award.

Plaintiffs filed the action to obtain damages they were not entitled to recover. Real estate taxes were asked for in the original petition. There was no basis for recovery of these. We will not, under these facts, set the award aside.

II.

Plaintiffs' second contention is it was error not to award them rent for the period commencing thirty days following the service of the forfeiture notice and ending when defendant vacated the premises. There was evidence after receiving the forfeiture notice defendant contacted plaintiffs about renting the property. Herman Anderson said rent would be $125 a month and he would think about renting to defendant. There is also evidence defendant attempted to tender $375 to Herman on April 29, 1988, and he refused the tender. This claim was in the nature of an action at law for damages. Therefore, the fact-findings of the district court are binding if supported by substantial evidence. Ravreby v. United Airlines, Inc., 293 N.W.2d 260, 262 (Iowa 1980). We find no basis to disturb the district courts' rulings on this issue.

III.

Plaintiffs' third contention is the court should have awarded them damages for the deteriorated state of the house when defendant vacated it. The trial court determined any damage was done prior to service of the notice of forfeiture. We are bound by these fact-findings. Id.

Plaintiffs admit it is possible all damage occurred prior to forfeiture, but plaintiffs contend they should be able to recover for damages occurring during the contract period.

When a buyer like defendant has defaulted in performance of a real estate contract, the seller has a number of remedies:

> (1) keep good its tender of performance, demand the balance of the purchase price, and sue for specific performance;
> (2) terminate the contract because of vendee's breach, keep the land, and sue for damages for the breach;
> (3) rescind the contract in toto; or
> (4) enforce a forfeiture.

Risken v. Clayman, 398 N.W.2d 833, 838 (Iowa 1987); Abodeely v. Cavras, 221 N.W.2d 494, 497-98 (Iowa 1974); First Nat'l Bank v. LeBarron, 201 Iowa 853, 856, 208 N.W. 364, 366 (1926). Additionally, the seller here could have foreclosed after giving thirty days' notice of an intent to accelerate default. The procedure was provided for in the contract. We find no basis here to accept plaintiffs'

argument. Forfeiture is a summary type of procedure in which the seller can have the property returned without granting the buyer the protection afforded in a foreclosure. Forfeiture is not favored. Risken, 398 N.W.2d at 839; Lett v. Grummer, 300 N.W.2d 147, 149 (Iowa 1981); Keokuk State Bank v. Eckley, 354 N.W.2d 785, 787 (Iowa App. 1984).

When the remedy of forfeiture is pursued by the seller against the defaulting buyer, the liability of the buyer for unpaid purchase money is extinguished. Risken, 398 N.W.2d at 838; Gray v. Bowers, 332 N.W.2d 323, 325 (Iowa 1983); Abodeely, 221 N.W.2d at 498. When the contract was forfeited, the vendors converted the debt into property and took the property in satisfaction of the debt. Farmers & Merchants Sav. Bank v. Farm Bureau Mut. Ins. Co., 405 N.W.2d 834, 838 (Iowa 1987); Risken, 398 N.W.2d at 839 Forfeiture is like bidding in the judgment at a foreclosure sale. Farmers & Merchants Sav. Bank, 405 N.W.2d at 838, Risken, 398 N.W.2d at 839.

Plaintiffs contend the election of remedies should not control and the Iowa courts should recognize postforfeiture actions by installment contract vendors.[1] A vendor cannot pursue two inconsistent remedies. Abodeely, 221 N.W.2d at 498.

1 We note these are some of the same arguments addressed in Note, A Rescission Approach to Vendor's Damages After Forfeiture of an Installment Real Estate Contract, 74 Iowa L. Rev. 901 (1989).

We interpret the cited cases to hold the right to pursue other remedies after forfeiture, including the right to sell for alleged waste, is lost. In Risken, 398 N.W 2d at 837, the court rejected an argument that sellers who had forfeited a real estate contract should still be entitled to fire insurance proceeds to repair damaged improvements The sellers argued the property should be restored to the value it would have had if a forfeiture had been completed in the absence of a fire. Additionally, the facts here provide no valid basis for the extension of additional remedies to the plaintiffs. Plaintiffs contend the property was damaged in the amount of $2,000. Defendants contracted to sell the property to defendant for $17,000 At the time of service of notice of forfeiture, the balance due plaintiffs, including accrued real estate taxes, was $12,183.44.

We affirm.

AFFIRMED.