



IN THE COURT OF APPEALS OF IOWA

JOE KRIEPS,	)	
Appellant,	)	Filed April 14, 1977
v.	)	
AGRI-BUSINESS, INC.,	)	51
Appellee.	)	2-57801

Appeal from Kossuth District Court - Joseph P. Hand, Judge.

Farm landlord's action against tenant for cash rent with counterclaim by tenant for crop damage allegedly caused by landlord's negligence and violations of the lease. From a directed verdict for the landlord on the counterclaim the tenant appeals. Affirmed.

Eldon J. Winkel of Winkel, Nitchals and Winkel of Algona, for appellant.

William Knapp of Stewart, Wimer and Bump of Des Moines, and R. A. Berkland, of Emmetsburg, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

CARTER, J.

This is an action between a farm tenant (Krieeps) and the lessor's successor-in-interest (Agri-Business). Agri-Business sued Krieeps for cash rent unpaid and he counterclaimed for damage to his soybean crop allegedly occurring because of (a) failure to remove the prior year's corn crop as agreed, so as to permit full utilization of the acres rented; (b) failure to keep a dike in repair thereby subjecting a portion of the acres rented to flooding; and (c) failure to warn the lessee of the danger of flooding that existed by reason of the hole in the dike. The original lessor, Knosby, is not a party to the action. This appeal concerns only the counterclaim upon which the trial court directed a verdict in favor of Agri-Business.

I. We first consider that portion of Krieeps' counterclaim based upon the alleged hole in the dike and resultant flooding of approximately 250 acres of soybeans. Said claim is urged on both contract and negligence theories.

Under the law of this state the relation of landlord and tenant is created by contract either expressed or implied. Putnam v. McClain, 198 Iowa 287, 199 N.W. 261 (1924). We are satisfied that the relationship between the parties to this action did not give rise to any general obligation on the part of either Knosby or Agri-Business to repair the dike in question except as may be provided in the agreement of lease. Willis v. Snyder, 190 Iowa 248, 251, 180 N.W. 290 (1920); 51C C.J.S. Landlord & Tenant § 368(2). Krieeps relies upon a provision of the lease in which the landlord reserves the "waterways" as supporting his contention that the landlord was required to keep the dike in repair. Assuming the word "waterways" refers to the dike, we are still faced with the proposition that the lease specifies no particular condition or state of repair in which

the landlord must keep the dike. The record is lacking in evidence as to what might constitute a reasonable state of repair under the circumstances.

We need not decide this facet of the case wholly on the issue just discussed, however, as there is a more compelling reason to sustain the motion for directed verdict as to crop damage caused by flooding. As stated in 52 C.J.S. Landlord & Tenant § 423(7):

" . . . , as a general rule, a landlord who is under a duty to keep in repair portions of the premises so demised, but reserved under his control, will be liable to a tenant only for damage to his property on his failure to make repairs after notice, and he is not liable in the absence of notice."

This would appear to accord with Iowa law. Mease v. Fox, 200 N.W.2d 791, 797 (Iowa 1972); Willis v. Snyder, supra; Woodbury Co. v. William Tackaberry Co., 166 Iowa 642, 148 N.W. 639 (1914). In this regard it is also stated in 52 C.J.S. Landlord & Tenant § 423(7):

"Knowledge of a defective condition imputed to a former owner is not imputed to a subsequent owner who had no actual notice."

It is clear from the record that the farm had been deeded to Agri-Business on May 4, 1973, and the lease had been assigned to Agri-Business at that time. Application of the foregoing legal principles to the present case leads us to the conclusion that the record fails to disclose sufficient notice to Agri-Business of the claimed defect in the dike to permit recovery of the consequential damages claimed. The hole in question was discovered by a neighbor who told Kriebs of its existence on June 20, 1973. There is nothing in the record to show Knosby or Agri-Business knew of the hole in the dike, or when it came into existence. At or about June 20, 1973, Kriebs told Knosby

of the hole and was told by Knosby to contact Agri-Business. He did not do so but instead arranged to repair the hole himself. Before any work was done, however, flooding commenced on or about July 1, 1972, which gave rise to the crop damage which is the basis of this claim.

II. We reach a similar conclusion as to the alleged duty to warn of the hole in the dike. Our review of the record fails to reveal any evidence of superior knowledge on the part of either Knosby or Agri-Business which would give rise to such duty. See *Wright v. Peterson*, 259 Iowa 1239, 146 N.W.2d 617 (1966); *Kutchera v. Graft*, 191 Iowa 1200, 184 N.W. 297 (1921). At trial Kriepps was the only witness. He testified that he did not discover the hole in the dike at the time he entered into the lease although he examined the premises. There is no evidence of the lessor's knowledge of this defect prior to the time Kriepps discovered it. We believe the trial court was correct in removing from jury consideration all issues relating to crop loss due to flooding.

III. A similar result obtains as to the portion of Kriepps' counterclaim which is based upon a failure to remove the prior year's corn crop from approximately 300 acres of the 500 tillable acres being rented. Viewing the evidence most favorable to Kriepps, the record reflects that the original lessor, Knosby, was unable to harvest the standing corn on 300 acres of the subject property in the fall of 1972 because of adverse weather conditions. On March 1, 1973, Knosby leased the farm to Kriepps, at which time the standing corn was still in the field. Kriepps knew the corn was there and assumed it would be removed in time for spring field work. This understanding was confirmed by Knosby after the lease was executed. On May 4, 1973, Knosby

deeded the farm and assigned the lease to Agri-Business. Krieeps alleges that unreasonable delay in removing the standing corn delayed planting his soybean crop thus adversely affecting maturity and resulting yield.

Even if Knosby failed to remove the corn as he orally agreed, we do not believe that Krieeps can subject Agri-Business, as assignee of the lease, to liability for the consequential damages alleged to have been sustained without having given Agri-Business notice that there was some problem incident to Krieeps' use of these tillable acres and an opportunity to correct this problem. The record is clear that no notice of this condition was given Agri-Business by Krieeps until after the corn had already been removed by Knosby.

When the time for performance of a contractual obligation is not fixed with certainty, some demand for performance and a reasonable time for compliance is necessary to render nonperformance actionable. 17 Am. Jur.2d Contracts § 356; Newborn v. Hyde, 132 Iowa 88, 107 N.W. 604 (1906). The purpose of this rule is to give the party in default an opportunity to remedy the breach and meet his obligation. This rule has particular application in cases like the present one where nonperformance is alleged to have subsequently caused consequential damages.

IV. We also note that the trial court in directing a verdict on this portion of the claim observed that it doubted that Krieeps had presented adequate evidence of actionable damages. Assuming that Krieeps was qualified to testify as to potential yield and market prices at the relevant period of time, we are still faced with a record barren of any evidence showing whether the crop would have matured in time to be harvested if it had been planted sooner. We cannot take judicial notice of this circumstance. A verdict was properly directed on this portion of the claim.

AFFIRMED.