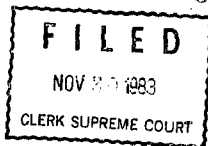


## IN THE COURT OF APPEALS OF IOWA



LAURENCE JOHNSON,

)

Plaintiff-Appellee/  
Cross-Appellant,

)

Filed November 30, 1983

)

vs.

)

KENNETH WOLTMAN, a/k/a  
KENNETH A. WOLTMAN and  
BERNIECE WOLTMAN, a/k/a  
BERNICE WOLTMAN, a/k/a  
E. BERNIECE WOLTMAN,

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~~2-69127~~

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Defendants-Appellants/  
Cross-Appellees.

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Appeal from Cherokee District Court - Richard F. Branco, Judge.

Defendants-appellants challenge the determination of the trial court that an oral crop share lease existed, entitling plaintiff-appellee to half of the 1981 crops from the farm of the defendant landowners. Plaintiff has cross-appealed, contending the trial court's award was too low because the expenses had not been determined correctly. AFFIRMED.

Marvin Wallace Miller of Miller, Miller, Miller & Green, Cherokee, for defendants-appellants/cross-appellants.

John R. Mugan, Manila, and Alice S. Horneber of Margolin, Gildemeister & Willia, Sioux City, for plaintiff-appellee/cross-appellant.

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

**PER CURIAM**

The defendants, Kenneth and Berniece Woltman, are the owners of a farm of almost four hundred acres in Cherokee County, Iowa. Kenneth Woltman had operated the farm until 1979, when his health declined. He was forced to have a neighbor take over the farming operation. Woltman and the neighbor reached an oral agreement whereby the neighbor would receive one-half of the value of the crop and would bear one-half of the farming expenses. This arrangement was to last only for the 1979 crop year because of the emergency nature of Woltman's ill health at that time.

In 1980, the Woltmans entered into a written stock share lease with another person, whereby the tenant would divide the farm crops with the Woltmans and buy into the Woltmans' livestock operation. This agreement did not work out, so the Woltmans entered into a written lease with another person on January 9, 1981. A form lease was used; it stated that the tenant was to pay one-half of everything raised on the property. Unfortunately, this last tenant disappeared in April, 1981.

The Woltmans again were in an emergency situation. Soon thereafter, they learned that the land which plaintiff Laurence Johnson usually leased for farming had been sold. On April 27, 1981, they contacted Johnson about the possibility of having Johnson lease the Woltman farmland. Johnson looked at the property, looked at the previous tenant's lease agreement with the Woltmans, and agreed to work the farm. No written agreement was ever made; the Woltmans claimed they could not enter into a lease with Johnson until the lease with the previous tenant was cleared up. The previous lease was resolved in June. At that time, a dispute arose between Johnson and Woltman about the method of payment as to whether Woltman was going to pay Johnson for the work performed or whether the two parties would share the proceeds from the crop. The parties tried to resolve the dispute but were unable to do so. Johnson brought this suit in July, but continued to work on the farm until August, when the Woltmans ordered him off their

property. The Woltmans then served a notice of termination on Johnson; in November, Johnson enjoined the Woltmans from converting the crops under dispute.

In the equity action, Johnson alleged that he and the Woltmans had entered into an oral crop share lease entitling Johnson to half the 1981 crops, seeking specific performance of this alleged crop share lease. The Woltmans denied that their arrangement with Johnson amounted to a crop share lease, contending they had merely hired Johnson to perform services in return for wages.

The trial court concluded that the parties had entered into an oral crop share lease entitling Johnson to half the 1981 crops. The court granted specific performance by awarding Johnson \$28,462.36; it described this figure as half the value of the 1981 crops minus half (Johnson's share) of certain planting expenses and all machinery operation expenses which initially had been paid by the Woltmans.

The Woltmans have appealed from the trial court's judgment. They contend the evidence did not support the court's conclusion that the parties' arrangement was a crop share lease; in the alternative, they contend that even if a crop share lease existed the evidence did not support the award of damages made by the court.

The plaintiff has cross-appealed, contending the trial court's monetary award was too low because the expenses had not been determined correctly.

Our scope of review in equity cases is de novo. Iowa R. App. P. 4 (1983).

**1. Existence of Oral Contract for Crop Share Lease.** It is well settled that an oral contract can be formed prior to the execution of a formal writing where that writing is intended only as a memorial. McCarter v. Uban, 166 N.W.2d 910, 912-13 (Iowa 1969). It must be shown that certain points of agreement were present in order to prove that a valid lease existed. There must have been: (1) a definite agreement as to the extent and boundary of the property leased; (2) a

definite and agreed term; and (3) a definite and agreed price of rental, and the time and manner of payment. Id. at 914. The agreement may be done orally or by writing. The statute of frauds is not involved here. See id. Terms are sufficiently definite to prove the existence of an agreement if the court can determine with reasonable certainty the duty of each party and the conditions relative to performance. Janssen v. North Iowa Conference Pensions, Inc., 166 N.W.2d 901, 907 (Iowa 1969). As the Iowa Supreme Court has stated:

The existence of an agreement or meeting of the minds should not alone be determined from the words used by the parties, but also from the situation and surrounding circumstances and by the inferences which mankind would ordinarily and reasonably draw therefrom.

McCarter v. Uban, 166 N.W.2d at 913.

The principle that a contract must be definite and certain in order to be given legal effect should not be carried to extreme lengths nor should it be used to defeat the intent of the parties. Palmer v. Albert, 310 N.W.2d 169, 172 (Iowa 1981). Contractual obligations may arise from implication as well as from express writing. Id. In the instant case, we feel that an agreement was reached through a combination of oral statements, physical demonstrations, and rationally-drawn inferences made by the parties. The three necessary points of agreement were met. Woltman showed Johnson around the property during their conversation on April 27, 1981. We think this sufficiently demonstrated the extent and boundary of the property to satisfy the first lease agreement condition. It is not evident that the parties discussed a term for the lease. However, as experienced farmers, it could properly be understood that the term would run for one crop season. This satisfied the second lease agreement condition. Finally, the price of rental and the time and manner of payment must be shown. Again, no specific agreement is evident. However, Woltman showed a copy of the previous lease to Johnson. It was in the form of a crop share lease. Johnson had worked under a crop share lease arrangement with different landowners for many years and this fact was

apparently known by Woltman. Woltman was in an emergency situation; he needed someone to do the work on the farm. When he had been in an emergency situation before, he had entered into a crop share lease arrangement. Woltman did not pay Johnson for his work, although he did pay other farm workers a wage. Testimony indicated the parties were waiting for the previous lease to be cleared up before they entered into one between the two of them. It is inferable, based on these circumstances, that the price of rental was to be the same as set out in the previous lease. The time and manner of payment would also be the same as is ordinarily used in a crop share lease arrangement.

Even though our review is de novo, we accord weight to the trial court's findings of fact, particularly when the credibility of witnesses is involved. Severson v. Elberon Elevator, Inc., 250 N.W.2d 417, 420 (Iowa 1977). Because Johnson asked for specific performance of an agreement affecting real estate, he had the burden to prove the contract by a preponderance of clear, satisfactory, and convincing evidence. See McCarter v. Uban, 166 N.W.2d 910, 912 (Iowa 1969). Giving weight to the trial court's findings of fact and determination of credibility of the witnesses, we find that the plaintiff Johnson met his burden of proving an oral crop share lease agreement existed.

**II. Specific Performance.** Having established the existence of a crop share lease agreement, it also appears evident to us that the Woltmans breached the agreement by prohibiting Johnson from entering the land and continuing the farm work. The Woltmans claim that, by requesting specific performance, Johnson failed to seek a proper remedy. We do not find this persuasive. It was appropriate for Johnson to bring an action for specific performance because he had a leasehold interest in particular property and in a unique quantity and quality of crop. Courts generally assume that in cases in which action is brought to enforce specific performance of a contract for an interest in land, money damages do not constitute an adequate remedy, so courts will take jurisdiction over the action as

one for specific performance without a showing that money damages would be an adequate remedy. 71 Am. Jur. 2d Specific Performance § 112 (1973). A lessee is entitled to specific performance of a lease as much as to damages for its breach. Id. at § 149. Once a court has obtained jurisdiction of a controversy, "it will determine all questions material or necessary to accomplish full and complete justice between the parties . . ." Simpson v. Bostwick, 248 Iowa 238, 244, 80 N.W.2d 339, 343 (1957). Thus, in cases where, through no fault of the plaintiff, a court is unable to grant specific performance because performance by the defendant has become impossible, a court may award monetary damages as a substitute. 71 Am. Jur. 2d Specific Performance § 214 (1973). See also Cornell v. Rodabaugh, 117 Iowa 287, 90 N.W. 599 (1902).

In the instant case, the trial court found that the Woltmans had used a portion of the crop in their livestock operations and, therefore, that it was impossible to grant specific performance of the crop share lease. Instead, the trial court made a valuation of the monetary effect specific performance would have had on the parties. The Woltmans claim that the trial court improperly determined the monetary award to Johnson. They base their claim on the holding in Watson v. Lewis, 272 N.W.2d 459, 465 (Iowa 1978), in which the Iowa Supreme Court stated that the proper measure of damages in a case which involved a crop share lease was the value of the benefit of the plaintiff's bargain plus any incidental damages. The Woltmans assert that Johnson failed to present sufficient evidence to establish either the benefit of the agreement or specific incidental damages. Therefore, the Woltmans argue, no damages should have been awarded.

It is true that the trial court did not use the formula set out in Watson v. Lewis. However, we do not find this to be error. The Watson court specifically limited its holding to that case. See 272 N.W.2d at 465. Furthermore, the Watson case differs from the instant case in the following respects: (1) specific performance was not originally pleaded in Watson, as it was here; (2) the plaintiff

in Watson had been able to find other land to work as a substitute for the land under the breached lease, whereas in the present case, Johnson did not find, and due to the lateness in the crop season at the time of the breach, probably could not have found, a similar substitute arrangement; and (3) the plaintiff in Watson had performed relatively little work under the crop share agreement, as compared to Johnson, who had performed a large portion of the yearly farm work. Therefore, we find that the Watson formula for calculating damages would have been inadequate and inappropriate in this case. By monetarily valuing the crop, dividing its value between Johnson and the Woltmans, and deducting the costs which Johnson would have incurred under the lease arrangement, the trial court managed to dispose of the case in a manner as close as was possible to specific performance. The disposition of the property brought the parties into positions similar to ones in which they would have been, had the agreement been fully performed by both parties. This fulfills the purpose of awarding damages: to compensate the innocent party for the loss which fulfillment of the contract would have prevented. Dopheide v. Schoeppner, 163 N.W.2d 360, 386 (Iowa 1968).

**III. Valuation of Costs of Production.** The trial court determined, and we agree, that "it was the intent of the parties to enter into an oral crop share lease based upon the terms and conditions of the written lease" between the Woltmans and the previous tenant until the lease was cleared up and then to set up a lease between themselves. Based on that previous lease, the trial court determined Johnson's share of the crops to be \$43,121.69. It then set off against this figure the amount it determined would have been Johnson's share of the costs and expenses of the farm operation. It charged Johnson with \$9,252.59 for gasoline and fuel oil, \$3,640.04 for machine hire, and \$1,766.70 for one-half the seeds and plants purchased, totalling \$14,659.33. The deduction for half the cost of seed is uncontested.

The previous lease agreement provided that the tenant would pay 100

percent of the cost of the following: (1) combining and shelling of crops; (2) farm machinery and equipment; and (3) weed spraying. In addition, the tenant was to pay fifty percent of the cost of these items: (1) fertilizer; (2) minerals; (3) chemicals; and (4) furnishing and cleaning the seed. The tenant was responsible for caring for and harvesting all crops, and for hauling manure to the property.

Johnson claims the cost of the machine hire should not have been attributed to him because he owned a full line of farm machinery which he would have used except that, because of the unresolved lease with the previous tenant, he was unable to do so and was forced to use the Woltmans' machinery. He claims he agreed to help the Woltmans with their livestock operation in exchange for being able to use the Woltmans' machinery. The trial court made no finding of fact regarding this exchange arrangement and we find insufficient evidence in the record to support such a claim. Whether Johnson would have used his own equipment is immaterial because in fact he used the Woltman machinery. There is insufficient evidence to support a claim that he would have been able to perform the farm operations for the rest of the lease term with his own machinery. The lease agreement stated that he would pay all costs of farm machinery and equipment. He did not do so before the breach and did not reimburse the Woltmans for the use of their machinery. The trial court did not commit reversible error by requiring him to pay for machine hire incurred by the Woltmans.

Johnson also claims that the cost of petroleum products should not have been deducted from his share of the crop value because a great portion of this expense would have been incurred during harvest, which was after the breach. Obviously, Johnson would have incurred that cost had the agreement been fully completed, no matter whose machines he used. It was his duty to pay these expenses, thus, they were properly deducted from Johnson's award.

The Woltmans counter that the trial court did not deduct enough from

Johnson's award. They claim the trial court should have included the following as falling under the lease agreement: (1) \$2,007.25 for labor which Johnson would have had to hire during harvesting season and for which the Woltmans had to pay instead; (2) \$2,324.18 for one-half of the cost of repairs and maintenance; (3) \$1,539.36 for half of the value of supplies purchased; (4) \$3,000.00 for manure hauling; (5) \$5,000.00 for labor performed by the Woltmans; and (6) \$15,195.21 for depreciation.

There is insufficient evidence in the Woltmans' 1981 income tax expense form to allow us or the trial court to determine whether the expenses claimed were incurred before or after the breach or whether the expenses claimed properly fell under the terms of the lease agreement. Therefore, we cannot deduct these amounts from the award. The trial court's disposition of the case is affirmed.

AFFIRMED.