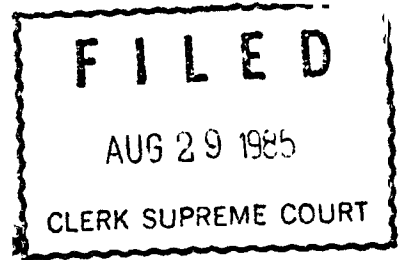


IN THE COURT OF APPEALS OF IOWA



IN THE MATTER OF THE ESTATE OF
CARROLL LESSENGER, Deceased,

)

Filed August 29, 1985

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5-271
84-888

ROBERTA BOULTON,

)

Executor-Appellant,

)

RAY BOULTON,

)

Intervenor-Appellant,

)

LUCILLE LESSENGER,

)

Applicant-Appellee.

)

Appeal from the Iowa District Court for Louisa County, Robert Bates,
Judge.

Executor and lessees appeal from the probate ruling in favor of the surviving
spouse's application for surrender of possession of farm real estate. **AFFIRMED.**

Russell Newell of the Newell Law Office, Columbus Junction, for appellant.

Edward Dailey of Edward W. Dailey Law Offices, Burlington, for
intervenor-appellant.

John C. Stevens of Lewis & Stevens, P.C., Muscatine, for appellee Lucille
Lessenger.

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

The appellants contest the trial court's holdings that set-off of the surviving spouse's share of decedent's estate is not subject to the appellants' leasehold interest. The court also denied a request for an injunction on behalf of appellants. We affirm the trial court's ruling.

Carroll Lessenger and his wife, the appellee, Lucille Lessenger, purchased two hundred acres of farmland in 1944 as tenants in common. The land was farmed by Carroll until he suffered from a stroke and was placed in a nursing home. While he was in the home, a lease was prepared of the two hundred acres between himself and his daughter, Roberta Boulton, and her husband Ray. It was signed April 11, 1975. Appellant says she did not consent to the lease, but acquiesced in it in order to keep peace in the family. In late 1976, Carroll changed his will, leaving his wife with her one-third share, leaving his other three children out of his will, and disposing the rest of the property to his daughter, Roberta. Roberta was also named as executor. Carroll died in November 1981 and a will contest followed, resolved by the court in Roberta's favor. After her husband's death, Lucille elected to take against the will and also saw an attorney about terminating the lease with the Boultons. She was informed by her attorney she would have to wait to serve notice pursuant to section 562.7 of the Code, and notice was given to Roberta and her husband August 28, 1982. A series of letters were exchanged between the attorneys for the parties between September 1982 and May 1983. They reflect an agreement that the Boultons would continue to lease the south one hundred acres and Lucille would control the north one hundred acres. She leased this land to another person.

In January 1984 Lucille filed an application requesting surrender of possession of her interest in the real estate, exempt personal property, and her share of other personal property. The appellees, the Boultons, asserted

the existence of the lease and asked the court for an injunction to keep Lucille from interfering in their possession and use of the property. On April 19, 1984, the court denied appellants' request for an injunction and granted appellee's application for surrender of possession "subject to the executor's application and order of the court that it is necessary to assume control" under section 633.350 of the Code. This appeal was taken May 16, 1984, and on May 18, Roberta filed as the executor for control of the property. The court's final ruling found there were sufficient assets in the estate to pay for the debts of the estate and denied the executor's application. No appeal was taken from this ruling.

Appellant Roberta and the intervening appellant, Ray Boulton, contend the court erred in finding the lease was terminated. The court held that the exchange of letters between the parties shows an agreement that the lease end. The Boultons say the letters are not an agreement or waiver, and that if they can be considered a waiver, it should apply only to Roberta as executor and not to Ray. They claim there is no reference to Ray's interest in the letters. Without citing any applicable cases, appellants also claim that if a waiver occurred, the effective date of termination of the lease should not be March 1983, as the court held, but some later date, and further objected to the court's denial of their request for an injunction.

In our de novo review of the trial court's holdings, we find a review of the record shows the trial court was correct in finding the leasehold was terminated and possession of the land by the surviving spouse is not subject to the alleged leasehold rights. The five letters exchanged between the parties are straightforward and show that there was an agreement that the Boultons would lease only the south one hundred acres. Their subsequent actions reflect the substance of the agreement. Roberta claims that as executor, and acting as tenant in common, she had to join in any termination of the lease. However,

she consented to termination of the lease through her attorney. An offer of settlement once accepted can be enforced. Cunningham v. Iowa-Illinois Gas & Electric Co., 243 Iowa 1377, 1382, 55 N.W.2d 552, 555 (1952). The agreement must be definite and certain in order to give it effect. Palmer v. Albert, 310 N.W.2d 169, 172 (Iowa 1981). We find no ambiguity in the agreement and hold with the trial court that the prior lease is terminated by agreement.

We also agree with the trial court that the waiver affects Ray Boulton as well. Contrary to appellants' assertions, the letters do refer to Ray Boulton, and he has testified the attorney represents him as well as the executor. In any event, the actions of the executor were within the powers enumerated at section 633.386 of the Code to handle leases of estate property and bind the estate.

Agricultural leases in Iowa run from March 1 to March 1 of the next year. Iowa Code § 562.5 (1985). The letters refer to the crop year beginning March 1, 1983. We find the trial court properly held that the lease ended March 1, 1983.

Since we have upheld the trial court's rulings, there is no basis for the appellant's request for an injunction to prevent interference with their leasehold rights.

We affirm the trial court judgment in all respects.

AFFIRMED.