

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

A. DANIEL MERRICK and
RAMONA M. MERRICK,

)

Appellees,

)

Filed April 14, 1977

vs.

)

RALPH H. STABEN and
MAXINE D. STABEN,

)

52

)

No. 2-57848

Appellants.

)

Appeal from Decatur District Court -- Gibson C. Holliday,
Judge.

An appeal from the trial court's order of specific
performance in a real estate transaction. - REVERSED

Charles L. Elson, of Leon, counsel for appellants.

Jones, Cambridge, Carl, Feilmeyer & Landsness, of
Atlantic, David W. Chase, counsel for appellees.

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

DONIELSON, J.

Ralph and Maxine Staben, the defendant-sellers, appeal the trial court's judgment for the plaintiff-buyer in an action for specific performance of a real estate contract.

The plaintiffs, Merricks, had the father of the plaintiff, Ramona Merrick, a real estate agent, present an Iowa Real Estate Association approved Offer to Buy a 360-acre farm from the appellants-Stabens. The payment provision provided \$3000 in cash as earnest money and provided further *"The remainder of \$72,600.00 is to be paid as follows, to wit: (see reverse side)(1) in cash to be paid upon delivery of the Warranty Deed upon the form recommended by the Iowa Real Estate Association; or as follows: (see reverse side of this form)."*

The contract further provided:

"6. ... Any agreement written on the back hereof, and there signed by the parties, shall be a part of this contract."

The broker, Baxter, then went to the appellants' home and they signed the front under the printed portions stating: *"The foregoing offer is accepted"*. The appellants steadfastly assert there was no reference to the reverse side on the front of the contract when they signed the front, there was no typing on the back of the contract, that the broker, now deceased, took the original and all copies with him and that all this was added to the contract by someone later. When they signed the offer, they thought it was a cash transaction.

There lies the current controversy encompassing the question of whether there was a contract so as to be the subject of the action for specific performance. The trial judge acted affirmatively on the question, and this court reacts

negatively.

We reverse.

Parole evidence of the surrounding circumstances is admissible to help resolve the issue of uncertainty and indefiniteness. See *Union Trust & Savings Bank v. State Bank*, 170 N.W.2d 674, 677 (Iowa 1969):

"In two recent cases we held that for the purpose of discovering the intention of both parties to a contract extrinsic evidence is admissible which throws light on the situation of the parties, the antecedent negotiations, the attending circumstances and the objects they were thereby striving to attain. Such evidence is adducible only for the purpose of interpreting the writing--not for the purpose of modifying, enlarging or curtailing its terms, but to aid in determining the meaning of what has been said. See *Hamilton v. Wosepka*, Iowa, 154 N.W.2d 164, 168-172; *Janssen v. North Iowa Conf. Pen., Inc.*, Iowa, 166 N.W.2d 901, 904, 905."

Our review of the surrounding circumstances lead us to the inevitable conclusion that there was no meeting of the minds. The appellant was 67 years old. This farm carried a \$25,000 loan from the Federal Land Bank and a \$30,000 loan from the Production Credit Association, so it took \$56,000 to be able to clear the title on this property. The provisions on the reverse side of this contract provide for seven percent simple interest. The Federal Land Bank loan required defendant-Staben to pay nine percent interest. The Production Credit Association wanted their \$30,000 mortgage paid in cash.

It does not follow logically that the defendant would agree to the payment provisions on the reverse side of this contract, considering the defendant-Staben's financial obligations, on this piece of property. Other facts such as

Staben's immediate return of the \$3000 to the broker, the broker's dual capacity plus the fact that the appellee-buyer signed both the front and the reverse side of the contract, and the appellant-seller refused to sign lead us to the decision that under the general rule of law, that the matters and times of payment are regarded as extremely important in contractual matters; they must be specific. See Tri-States Investment Co. v. Henryson, 179 N.W.2d 362, at 364 (Iowa 1970) where it states:

"The terms governing the manner and time of payment of the price agreed upon have ordinarily been regarded as such an important part of the agreement that where the alleged contract expressly left these terms open for future negotiation the courts have usually held that the minds of the parties had never in fact met upon the essentials and a conveyance of the property would not be specifically enforced." (cites omitted)"

We find that there was no meeting of the minds regarding the manner and time of payment of the price agreed upon nor was the specific terms of the contract complied with as it relates to signing the reverse side. This side of the contract was clearly of overwhelming importance to both parties--the appellee because he could not raise the necessary cash to purchase the farm; and the appellant because of his financial obligations on the farm which add considerable credibility to his assertions. These facts plus others lead us to conclude there was no contract between the parties.

REVERSED - all judges concur except Allbee, C.J., who concurs in the result only.