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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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JAMES J. BOWERSOX and BARBARA J. BOWERSOX, Plaintiffs-Appellants, vs. PAUL F. ZAMASTIL and LAVONA V. ZAMASTIL, Defendants-Appellees.	)	Filed March 23, 1982 1-437 2-66269

Appeal from Johnson District Court, L. Vern Robinson, Judge.

Plaintiffs appeal the trial court's refusal to order specific performance of an option contract, under which plaintiffs were given the option to purchase defendant's undivided one-half interest in a tract of land devised by defendant's mother to defendant and another. Plaintiffs contend the trial court erred in admitting testimony concerning the contract since the contract was not ambiguous and erred in denying specific performance of the option contract. AFFIRMED.

David S. Good of Nazette, Hendrickson, Marner & Goood, Cedar Rapids, for plaintiffs-appellants.

William W. Crissman of Lawrence, Crissman & Benz, Cedar Rapids, for defendants-appellees.

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

Plaintiffs appeal the trial court's refusal to order specific performance of an option contract, under which plaintiffs were given the option to purchase defendant's undivided one-half interest in a tract of land devised by defendant's mother to defendant and another. Plaintiffs contend the trial court erred in admitting testimony concerning the contract since the contract was not ambiguous and in denying specific performance of the option contract. We find the trial court did not err in admitting testimony concerning the contract and properly refused to compel defendants to convey their undivided one-half interest in the land.

Plaintiffs, James J. and Barbara J. Bowersox, and defendants, Paul F. and Lavona V. Zamastil were neighbors. Plaintiffs farmed their own land and had also farmed some land rented from defendant and defendant's mother, Anna Zamastil. After some occasional inquiries by plaintiff, defendants agreed to sell plaintiffs eighty acres of land in 1973. The land sale contract included a provision purporting to grant plaintiffs a first option to purchase eighty acres of land, owned by Anna Zamastil, which was adjacent to the eighty acres defendants sold plaintiffs. The option provision stated an exercise price of $750 per acre.

After Anna Zamastil's death in 1977, plaintiffs sought to exercise their option to purchase the eighty acres inherited and owned jointly by defendants and Anna Zamastil's grandson, Robert. Plaintiffs attempted to exercise their option to purchase the land and defendants refused to convey the land on the ground Robert, as owner of an undivided one-half interest in the land, was unwilling to join in the conveyance.

Plaintiffs then sought specific performance of the option contract. The trial court refused to order specific performance, holding a buyer cannot compel conveyance of one co-owner's partial interest in land, when another co-owner refused to convey his interest, the buyer knew the seller's interest was only partial and the seller lacked authority to bind a co-owner.

Plaintiffs appeal the ruling of the trial court contending the trial court erred in admitting testimony that modified the unambiguous contract and by failing to compel

defendants to convey their undivided one-half interest in the land. We affirm the trial court's order denying specific performance.

This case was tried as an equitable action. Consequently, our review is de novo. Severson v. Elberon Elevator, Inc., 250 N.W.2d 417, 420 (Iowa 1977). We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Parole Evidence.

Plaintiffs contend the trial court erroneously admitted evidence tending to modify the contract rather than merely explain or clarify its terms. The dispute centers on the interpretation of the following portion of the land sale contract, particularly the underscored phrase:

> 9. OPTION: Mrs. Anna Zamastil, mother of Paul F. Zamastil, one of the Sellers herein, owns the 80 acre tract immediately west of and adjacent to the tract herein conveyed. Sellers grant to Buyers, to the extent they are legally capable of so doing, a first option to purchase such adjoining 80 acres on the death of Anna Zamastil or at such time as she might, during her lifetime, desire to sell, at a price to be then agreed upon but not in excess of the sum of $750.00 an acre.

Plaintiffs claim the clear and singular meaning of the paragraph was defendants gave plaintiffs a first option to purchase whatever interest defendants possessed in the eighty acres. Defendants claim that paragraph only gave plaintiffs the option to purchase the entire eighty-acre tract, if defendants became legally capable of conveying the entire eighty acres at the time plaintiffs sought to exercise of their option. The practical difference between the parties' interpretations is plaintiffs' interpretation purports to cover only the interest defendants have in the land, whereas defendants' interpretation creates an option to purchase the entire tract of land, if and when defendants become legally capable of conveying all eighty acres.

Generally, the parol evidence rule "forbids the use of extrinsic evidence to vary, add to, or subtract from the agreement." Pappas v. Hausen, 197 N.W.2d 607, 611 (Iowa 1972). The rule, however, does not preclude admission of extrinsic evidence if the contract is ambiguous. See Egan v. Egan, 212 N.W.2d 461, 464-65 (Iowa 1973). A

contract is ambiguous and not subject to the parol evidence rule where the contract on its face is reasonably susceptible to more than one interpretation. Iowa Des Moines National Bank v. Insurance Company of North America, 459 F.2d 650, 654 (1972). The trial court rejected plaintiffs' contention the contract was unambiguous on its face, and admitted testimony showing plaintiffs' claim varied the clear meaning of the contract.

We are of the opinion the phrase "to the extent they are legally capable of doing so," in the context of the balance of the option paragraph, is subject to more than one reasonable interpretation. Since the option paragraph refers only to the undivided eighty-acre tract of land, an interpretation that defendants agreed to convey the entire eighty acres if and when they became legally capable of doing so, either through direct ownership or upon the authorization of a co-owner, is not unreasonable. Plaintiffs' interpretation is also possible and not unduly strained. We conclude the trial court properly received extrinsic evidence to ascertain the parties' intent and the meaning of the phrase "to the extent they are legally capable of doing so." See Tamm, Inc. v. Pildis, 249 N.W.2d 823, 831-32 (Iowa 1976).

II. Specific Performance

The interpretation to be given the underscored phrase in the option contract is crucial given the effect of Jasperson v. Bohnert, 243 Iowa 1275, 1277-78, 55 N.W.2d 177, 178 (Iowa 1952). In Jasperson, defendants-vendors, two sisters and their brother, inherited a tract of land "share and share alike" from their mother. The sisters signed a contract, drafted to convey the land to plaintiff. The contract was never signed by the brother. Plaintiff then sought specific performance of two-thirds of the contract, representing the sisters' aliquot portion of the land. The supreme court held:

> specific performance of a part of a contract will not be denied. . . where the vendor makes a contract to sell land as though he were the owner but merely has an interest therein and therefore cannot convey complete title, or where the vendor represents himself as clothed with authority to bind his co-owner and it later develops he did not have such authority. In such a case the vendor

> can be compelled to convey whatever interest he has in the land. If the purchaser did not know, at the time the contract was made, the seller's interest was partial or that he lacked authority to bind a co-owner, the purchaser will be compensated by an abatement in the agreed price... But, if, at the time the contract was entered into, the purchaser did know the vendor would only be able to convey a partial interest, the court's generally hold the purchaser cannot compel specific performance or conveyance of the vendor's partial interest with an abatement in the agreed price.

Id.

If the option is interpreted as plaintiffs claim it should be, Jasperson would not prevent specific performance of the contract since the contract applied only to defendant's interest in the land, whatever it may have been when plaintiffs sought to exercise the option. It would have no effect upon the remaining co-owner's interest. In other words, plaintiffs seek to avoid the effect of Jasperson by arguing the defendant optioned only his interest in the land, without reference to any of the co-owner's interest. Giving the option the interpretation asserted by defendants, Jasperson would deny specific performance of the contract, since plaintiff knew at the date of the contract defendant had only the expectancy of becoming a co-owner of the property, and defendant did not represent he had authority to bind the co-owner.

Our review of the record convinces us plaintiffs intended to have an option to purchase the entire eighty-acre tract of land. Plaintiffs knew defendants were unable to convey the entire tract of land at the time the contract was drafted. The testimony of Paul and Lavona Zamastil indicates the option was worded to avoid the problem of co-owner Robert not being a party to the option. They testified the drafting attorney, Mr. Tucker, suggested that wording because defendants were not sole owners of the land. Our conclusion is buttressed by the testimony of plaintiff indicating the importance of ultimately buying the 80 acres owned solely by defendant and the eighty acres owned jointly by defendants and Robert. Plaintiff's

position appears to be more of an attempt to profit from the tremendous increase in the price of farmland over the option price, than to expand farming operations which was cited as the original reason plaintiffs were interested in purchasing land owned by the defendants.

We have concluded the option was intended to cover all of the eighty acres. Plaintiffs, however, argue, they should have specific performance to the extent defendants now have an interest in the land. Under the rule enunciated in Jasperson v. Bohnert, 243 Iowa 1275, 1277-78, 55 N.W.2d 177, 178 (Iowa 1952), since plaintiffs knew defendants did not have complete title to the land and no allegation is made defendants were authorized by a co-owner to convey full title to the land, plaintiffs will be denied specific performance of defendants' partial interest. The decision of the trial court is affirmed.

AFFIRMED.